

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Competitive Bidding Procedures for Auction	)	AU Docket No. 12-25
901 and Certain Program Requirements	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for	)	WC Docket No. 07-135
Local Exchange Carriers	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

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**COMMENTS OF  
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES,  
MAINE OFFICE OF THE PUBLIC ADVOCATE,  
THE NEW JERSEY DIVISION OF RATE COUNSEL, AND  
THE UTILITY REFORM NETWORK  
ON COMPETITIVE BIDDING PROCEDURES FOR AUCTION 901 AND CERTAIN  
PROGRAM REQUIREMENTS**

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## SUMMARY

The National Association of State Utility Consumer Advocates (“NASUCA”), the Maine Office of the Public Advocate, the New Jersey Division of Rate Counsel (“Rate Counsel”), and The Utility Reform Network (“TURN”) (collectively, “Consumer Advocates”) have grave concerns about the auction mechanisms for mobility and broadband services set forth in the far reaching and fundamentally flawed Order and Further Notice of Proposed Rulemaking (“FNPRM”) issued by the Federal Communications Commission to significantly alter universal service funds (“USF”) and intercarrier compensation (“ICC”).<sup>1</sup> Consumer Advocates nonetheless address issues that the Wireless Telecommunications and Wireline Competition Bureaus (“the Bureaus”) raise in their Public Notice (“Notice”) that relate to the implementation of Mobility Phase I auctions (“the Auctions”). As requested by the Bureaus, these comments specifically discuss the issues pertaining to Mobility Phase I auctions. Consumer Advocates’ initial comments focus on issues identified in Sections III. A, IV. A and F of the Notice, while deferring comments on other sections until the reply round of comments.

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<sup>1</sup> / *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011. In these comments, references to the Report and Order are cited as “Order” and references to the Further Notice of Proposed Rulemaking are cited as “Further Notice.” As the FCC is well aware, a number of parties, including NASUCA, have appealed the Order. Those appeals have been consolidated in the 10<sup>th</sup> Circuit Court of Appeals under *In re: FCC 11-161* as No. 11-9900.

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## I. INTRODUCTION

The National Association of State Utility Consumer Advocates (“NASUCA”) as an organization,<sup>2</sup> and NASUCA members the Maine Office of the Public Advocate,<sup>3</sup> the New Jersey Division of Rate Counsel (“Rate Counsel”),<sup>4</sup> and The Utility Reform Network (“TURN”)<sup>5</sup> (collectively, “Consumer Advocates”) hereby submit comments in response to the Public Notice (“Notice”) released by the Federal Communications Commission’s (“FCC” or “Commission”), Wireless Telecommunications and Wireline Competition Bureaus (“the Bureaus”) regarding the competitive bidding procedures for Auction 901 and certain program requirements pertaining to Mobility Fund Phase I Auctions.<sup>6</sup> In this Notice, the Bureaus seek comment on what is (incorrectly) described

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<sup>2</sup> NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

<sup>3</sup> The Maine Public Advocate represents all consumers of utility services in Maine, pursuant to 35-A M.R.S.A. Section 1702. The Public Advocate and staff take actions to ensure that Maine’s utility customers have affordable, high quality utility services. Under Section 1702(5) of the Maine statutes, the Public Advocate may appear on behalf of utility ratepayers in “proceedings before state and federal agencies... in which the subject matter of the action affects the customers of any utility doing business in the State.....”

<sup>4</sup> Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is in, but not of, the New Jersey Department of Treasury. *N.J.S.A. §§ 52:27EE-46 et seq.*

<sup>5</sup> The Utility Reform Network (“TURN”) is a California state-wide non-profit consumer organization that has represented the interests of California telecommunications, electricity and gas customers before California and federal regulatory agencies and legislatures for the past 35 years.

<sup>6</sup> *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Public Notice, DA 12-25 (rel. February 2, 2012). The Public Notice followed the Report and Order and Further Notice of Proposed Rulemaking, released November 18, 2011. In these comments, references to the Report and Order are cited as “Order” and references to the Further Notice of Proposed Rulemaking are cited as “Further Notice.”

as a reverse auction to award \$300 million in one-time Mobility Phase I support, including comment on auction procedures and related programmatic issues. Among these issues are:

- Areas eligible for Mobility Fund Support;
- Auction Design; and
- Reasonably Comparable Rates

Consumer Advocates believe that the legal authority of the Commission to use Universal Service Funds for this purpose is questionable.<sup>7</sup> Nonetheless, we offer comment on some of the issues set forth in the Notice, while deferring comment on other issues until reply.

## **II. The Bureaus should refine the criteria used to assess proposals to serve areas eligible for mobility fund support.**

Consumer Advocates continue to believe that the most effective means of allocating mobility funds (and other universal service funds) is through a procurement process.<sup>8</sup> The auction design described in the Order is fundamentally flawed and will not result in the most efficient, economical or equitable use of the funds available for Mobility Phase I. Under Mobility Phase I, the Commission “will award one-time support to carriers that commit to provide 3G or better mobile voice and broadband services in areas where such services are unavailable, based on the bids that will maximize the road

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<sup>7</sup> Consumer Advocates, January 18, 2012 Comments, at 64-65, 81.

<sup>8</sup> *Id.*, at 109-110.

miles covered by new mobile services without exceeding the budget of \$300 million.”<sup>9</sup> As described in the Notice, the sole criterion for determining winning bids would be a comparison of bids based on covering the most road miles at the lowest cost. Thus, bidders will not be bidding in head-to-head competition to serve a defined area, but instead will be bidding against other carriers on a nationwide basis.<sup>10</sup> Since competing proposals may involve areas that are unique to each proposal, it will be difficult to compare their relative merits. Road miles alone, may be a poor indicator of meritoriousness and efficiency.

As Consumer Advocates have pointed out, this process is not, in fact, a reverse auction and, therefore, it will not produce the economically efficient outcomes that are the justification for employing auctions to distribute universal service funds.<sup>11</sup> In a true reverse auction, bidders would bid against each other for a defined geographic area. That is not the case here.

This is a “competition” for a nationwide pool of funds, not an auction. The “auction” mechanism described in the Notice bears a greater similarity to the competing applications for Broadband Technology Opportunities Program (“BTOP”) funding under the American Reinvestment and Recovery Act (“ARRA”) than to an auction. In both cases, policy makers were tasked with distributing a funding amount that is insufficient to fund all projects deemed in need of support. But, in addition to being specifically authorized by statute, the ARRA approach to determining which of the many competing

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<sup>9</sup>Notice, at para. 2.

<sup>10</sup>Id., at para. 10.

<sup>11</sup>Consumer Advocates, January 18, 2012 Comments, at 67, 71-72.

applications should receive funding was markedly different and far superior to the FCC's approach.

The process described in the Order, Further Notice and Notice for the Mobility Fund is inequitable. Whereas under ARRA, all states benefited from at least one project, there is no suggestion in the Order, the FNPRM or the Notice that the FCC's process would ensure that all states with areas currently lacking mobility service will receive support. Moreover, basing a decision solely on cost and road miles served is inherently biased in favor of **lower-cost** areas, which is ironic considering that the Commission is tapping into universal service funds heretofore used to support high-cost areas. As has been discussed previously by NASUCA and Consumer Advocates, ranking of bids from lowest to-highest on a nationwide basis will favor geographic areas that are easy to serve and exclude higher cost areas, which are quite possibly those most in need of the support.<sup>12</sup> Moreover, an evaluation based on road miles ignores a fundamental indicator of the value of a proposal – namely, the number of customers who are likely to benefit from the project.

One key difference between the process developed for ARRA compared with the FCC's proposed "auctions" for the Mobility Fund is that ARRA relied upon a robust set of criteria to evaluate competing applications; these criteria were developed by the agencies after extensive public comment. In contrast, the Mobility Phase I process does not include criteria sufficient to allow decision makers to determine the extent to which they will, on a comparative basis, achieve the stated objectives of the fund. For instance,

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<sup>12</sup> NASUCA, April 18, 2011 Comments, at 58-59; Consumer Advocates, January 18, 2012 Comments, at 71-72.



in weighing the merits of various proposals, ARRA considered the population that would be served and the presence of anchor institutions, as well as disadvantaged populations. This provided decision-makers with important information for use in assessing competing proposals. In contrast, the proposed mechanical exercise of weighing proposals on the basis of the cost/road miles tells the Commission very little, if anything, about the extent to which a given project will benefit the public relative to other proposals.

Consumer Advocates propose three steps the Bureaus can take to improve upon the proposal. While the Order sets forth the general approach for Mobility Phase I funding distribution, nothing in Order precludes the Bureaus from refining the road mile criteria and establishing additional criteria pertaining to the service proposed in the bids as a means of differentiating between proposals and more finely targeting support, thus improving the efficacy of the process.

First, the road miles criterion should be modified to include weighting by population.<sup>13</sup> With Mobility Fund Phase I, the Order indicates that the basis for calculating the number of “units served” in each unserved Census Block will be the number of road miles, regardless of population,<sup>14</sup> and the Further Notice and Notice also follow this convention.<sup>15</sup> Consumer Advocates believe that by excluding population from the “units served” calculus, the Mobility Fund will result in an inefficient use of funds. It makes little sense to give a higher priority to unserved areas that might have a high number of road miles, but negligible population, potentially leaving other unserved areas with higher population and a smaller number of road miles without service. It would be

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<sup>13</sup> Consumer Advocates, January 18, 2012 Comments, at 83.

<sup>14</sup> Order, at para. 350.

<sup>15</sup> Notice, at para. 10.

extremely easy to weight road miles by population, and thus generate a more reasonable basis for determining the number of unserved units.<sup>16</sup> When discussing the basis for support in the Phase II Mobility fund, the Notice indicates that “other units” might be considered.<sup>17</sup> Consumer Advocates urge the Commission to adopt a population-weighted road mile basis rather than road miles alone for Phase I.

Second, for those situations where the geographic areas of bids do overlap, the Commission and the Bureaus should consider the retail price of the service and the quality of the service proposed by the bidder. Without considering price, assessing otherwise comparable bids will be next to impossible. A low bid for support that includes a “high” retail service price is substantially different from a bid that is somewhat higher but includes a “low” retail service price. The affordability of the service is critical to customers and will affect the extent to which customers benefit from the service.

Finally, the Bureaus should require applicants to demonstrate that the networks proposed in their bids can be upgraded in the future to support improved speeds and other enhancements that may become available. Consumer Advocates reiterate that it is essential for the FCC to reclassify mobility broadband as a telecommunications service so that it qualifies as a service eligible to receive federal universal service support, under the criteria set out in 254(c) (1) (A)-(D).<sup>18</sup> Further, it should be noted here that while the FCC continually references “4G” mobile service, all “4G” service is not created equally. There are differences between the 4G standard adopted by the ITU and the services

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<sup>16</sup> For example, data on the population in the Census Block and the overall population in all unserved areas could be used to generate a weight that would be used to adjust the number of road miles to “population weighted road miles.”

<sup>17</sup> Further Notice, at para. 1122.

<sup>18</sup> Consumer Advocates, January 18, 2012 Comments, at p. 81.

marketed by individual carriers as “4G”. As CNN observed, “4G is a myth (and a confusing mess).”<sup>19</sup> Moreover, as Consumer Advocates have pointed out, approaches to providing “4G” services in urban areas may be an overly costly and inefficient means of providing improved speed in rural areas, where the use of LTE is not warranted.<sup>20</sup> The main criteria for determining whether a service is or is not an advancement over 3G networks is speed. The FCC should consider the potential to upgrade the speed of a network as a criterion for evaluating bids. Moreover, rather than relying on the term “4G” as a standard for assessing mobility services going forward, the Commission should instead use demonstrated speeds as the measuring stick for mobility broadband.

With respect to service quality, at least two criteria should be evaluated: signal strength and provision of location-based E-911 service. Considering signal strength by road miles alone should not be sufficient. In addition to meeting criteria for signal strength by road miles, bidders should be required to certify, by percentage of buildings within the territory covered by the bid, the extent to which their signal can be received inside of residential, commercial and public buildings. A bid that provides superior signal strength should receive precedence over a bid with comparable cost and inferior signal strength. Further, service providers should be required to construct facilities that are E-911 capable, in accordance with FCC requirements for the transmission of location-based information. Finally, bids which specify the provision of more affordable service pricing options should be given precedence over bids with less affordable pricing options in cases where competing bids at comparable costs and signal strength are submitted for the same territory.

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<sup>19</sup> [http://money.cnn.com/2010/12/01/technology/4g\\_myth/index.htm](http://money.cnn.com/2010/12/01/technology/4g_myth/index.htm)

<sup>20</sup> Consumer Advocates, January 18, 2012 Comments, at 81-82.

### **III. AUCTION PROCEEDURES**

#### **A. Auction Design**

As discussed in our previous comments,<sup>21</sup> Consumer Advocates agree with the proposal set forth in the Notice that Mobility Phase I (and Phase II) should involve a single-round auction with sealed bids.

#### **B. Reasonably Comparable Rates**

The Notice asks for comment about a standard for determining rates that are “reasonably comparable” to urban rates for the Mobility Phase I funding process. It is important to note that the Further Notice specifies that standalone voice service must be offered by any Mobility Fund support recipient.<sup>22</sup> This requirement is important for customers, helping to ensure that they will not be forced to purchase services in excess of what they need and can afford, such as broadband service when all they want is voice<sup>23</sup>. For purposes of Mobility Phase 1, Consumer Advocates recommend that the stand-alone voice plan should be comparable to a recipients’ lowest cost plan that includes at least 450 minutes per month (not limited by nights or weekends). This is comparable to the lowest price basic individual plans (other than “senior plans”) offered by Verizon, AT&T and Sprint.<sup>24</sup> In addition, the Bureaus should clarify that the under the “comparable service” requirement, support recipients should also be required to provide any “senior”

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<sup>21</sup> Consumer Advocates, January 18, 2012 Comments, at 85-88.

<sup>22</sup> Further Notice, at para. 1141.

<sup>23</sup> Clearly, the FCC should not force consumers to adopt broadband for want of an affordable alternative.

<sup>24</sup> See, for example, <http://www.verizonwireless.com/b2c/plans/?page=single>

plans or lower cost plans with fewer than 450 minutes offered in their non-supported service territory, for consumers who need less.

The Bureaus propose that “[s]olely for purposes of Phase I of the Mobility Fund, any rate equal to or less than the highest rate for a matching service charged in an urban area would be reasonably comparable to, i.e., within a reasonable range of, rates for similar service in urban areas.”<sup>25</sup> The question then becomes, what is a reasonable range of rates? As the Bureaus recognize, while the Commission is in the process of undertaking rate surveys, that data is not yet available. The Notice suggests the possibility of relying on rate benchmarks. If the Commission chooses to rely on such benchmarks, the proposal should be put out for further comment so that parties have ample time to review the assumptions and analysis supporting the benchmark and its applicability to the high cost areas in question. In the absence of survey data or a standard set of rate benchmarks, for the purposes of the Phase I Mobility process, Consumer Advocates believe it would be reasonable to set the rural rate for supported mobility services at the same level as the urban rate for the same services offered by the winning bidder.<sup>26</sup> If the winning bidder does not offer service in urban territory, the supported rate should be the same rate that applies to the service offered by the bidder in its other territory. The Commission could solicit further comment on revisions to prices once the surveys of service rates are complete and parties have an opportunity to comment on the surveys.

The Bureaus then ask for comment on whether “a recipient could demonstrate compliance with the required certification that its rates are reasonably comparable if each

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<sup>25</sup> Notice, at para. 68.

<sup>26</sup> Indeed, most wireless carriers offer “national” plans, that do not vary from area-to-area.

of its service plans in supported areas is substantially similar to a service plan offered by at least one mobile wireless service provider in an urban area and is offered for the same or a lower rate than the matching urban service plan.”<sup>27</sup> Consumer Advocates believe that, in the absence of rate survey data, this is a reasonable approach for Mobility Phase I.

Following from this, the Notice seeks comment on three possible approaches to determining which service options should be provided. The Notice asks whether a support recipient should be required to make the comparison for:

- all of its service plans;
- only the stand-alone plan and one of its plans offering broadband; or
- its required stand-alone voice plan and a sub-set of plans adopted by a specified percentage of its customers, for example 50 percent?

Consumer Advocates may offer further comment on this issue in reply. As noted earlier, Consumer Advocates continue to doubt that the Commission has the authority to use universal service funds to support the deployment of mobility data and broadband service.<sup>28</sup> For customers to receive the most benefit from the Mobility Funds, it is important that the customers receive the services that are most useful to them. In high cost areas, there are less likely to be capacity constraints on wireless spectrum,<sup>29</sup> and once the network is constructed there appears to be little reason to allow supported carriers to offer only a subset of services offered in other areas. The network technology, billing operations and other OSS functions are the same, regardless of where the service is provided. Any differences in operating costs would apply to all services offered over the

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<sup>27</sup> Notice, at para. 67.

<sup>28</sup> Consumer Advocates, January 18, 2012 Comments, at 64-65, 81.

<sup>29</sup> *Id.*, p. 82.

supported network, and profit margins would likely be higher for higher cost plans with more minutes. Thus, Consumer Advocates' preliminary view is that support recipients should be required to offer all of their service plans at comparable rates.

#### **IV. CONCLUSION**

As discussed at the outset of these comments, Consumer Advocates have grave doubts as to the legality and reasonableness of many aspect of the FCC's Order. Despite these doubts, Consumer Advocates have attempted to respond to the issues raised for comment in the Notice – despite the fact that the Notice is based on the flawed Order. On behalf of the consumers who are supposed to benefit from the FCC's decisions – who are also those who will have to pay for those decisions – Consumer Advocates commend these comments to the FCC's attention.

Respectfully submitted,

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